

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE ELECTRONIC BOOKS ANTITRUST
LITIGATION

No. 11-md-02293
(DLC) ECF Case

This Document Relates to:

THE STATE OF TEXAS, et al.,

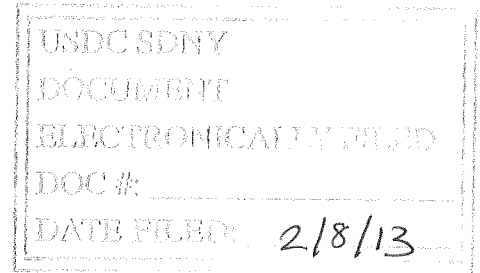
Plaintiffs,

v.

HACHETTE BOOK GROUP, INC., et al.,

Defendants.

Civil Action
No.12-cv-6625



~~PROPOSED~~ FINAL JUDGMENT

WHEREAS Plaintiff States filed a complaint in this Court on August 29, 2012 against E-book publishers Simon & Schuster, Inc., Simon & Schuster Digital Sales, Inc., HarperCollins Publishers, L.L.C, and Hachette Book Group, Inc. (individually a “Defendant”, collectively “Defendants”) alleging an unlawful agreement to fix, maintain or stabilize prices of E-books in violation of federal antitrust laws (“Settlement Complaint”);

WHEREAS Plaintiff States seek damages and injunctive relief in their sovereign capacity and as *parens patriae* on behalf of Consumers residing in Plaintiff States who have purchased E-books from a Named Publisher;

WHEREAS, in order to resolve any and all disputes arising from the Complaint, Plaintiff States and each Defendant executed a Settlement Agreement (the "Settlement Agreements") which were filed with the Court on August 29, 2012 and are incorporated by reference herein;

WHEREAS, the Settlement Agreements do not constitute an admission of liability or of any issue of fact or law by any Defendant;

WHEREAS, in full and final settlement of the claims set forth in the Settlement Complaint, Defendants have paid compensatory damages, costs of notice and settlement administration and payments to Plaintiff States;

WHEREAS, Defendants' payments do not constitute nor will be treated as payments in lieu of treble damages, fines, penalties, punitive recoveries or forfeitures;

WHEREAS, pursuant to this Court's Preliminary Approval Order, notice of the Settlement Agreements was given in accordance with 15 U.S.C. § 15c and the requirements of due process. An opportunity to be heard was given to all persons requesting to be heard in accordance with this Court's orders. The Court has reviewed the terms of the Settlement Agreements, the submissions of the parties in support of them, and the comments received in response to the notice. A hearing regarding the fairness of the Settlement Agreements and Revised Distribution Plan was held on February 8, 2013;

NOW, THEREFORE, without trial or adjudication of any issue of law or fact, before the taking of any testimony at trial, without the admission of liability or wrongdoing by any Defendant and upon the consent of the parties hereto, this Court finds as follows:

I. DEFINITIONS

All capitalized terms in this Final Judgment shall have the same meaning as defined in the Settlement Agreements between Plaintiff States and each Defendant, dated June 11, 2012.

II. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over the Defendants. The Complaint states a claim upon which relief may be granted against Defendants under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, Section 4c of the Clayton Act, 15 U.S.C. § 15c, and Section 16 of the Clayton Act, 15 U.S.C. § 26. Jurisdiction lies in this Court pursuant to 28 U.S.C. § 15.

III. APPLICABILITY

A. This Final Judgment shall apply to Plaintiff States, Defendants and Consumers in the Plaintiff States who did not file with the Court valid and timely requests for exclusion from the Settlement Agreements. The Court finds that the persons listed on Attachment 1 to this Final Judgment submitted valid and timely exclusion requests.

B. Except with respect to Defendants (“Releasees”), this Final Judgment does not constitute a release or otherwise affect any rights Plaintiff States and Consumers have or may have against any other entity whatsoever, including Apple Inc., Holtzbrinck Publishers, LLC, d/b/a Macmillan, Penguin Group (USA), Inc., or any of their parents, affiliated entities, officers, directors, employees or attorneys.

IV. SETTLEMENT AGREEMENT APPROVAL

The Court has determined that the Settlement Agreements are, in all respects fair, reasonable, and adequate and in the best interests of Consumers in the Plaintiff States, and that notice thereof comports in all respects with 15 U.S.C. § 15c and due process, and hereby approves the Settlement Agreements.

V. CONSUMER DISTRIBUTION PLAN

The Revised Consumer Distribution Plan ("Revised Distribution Plan"), set forth as Exhibit 12 in Plaintiff States' Memorandum in Support of Motion for Final Approval, is fair, reasonable and adequate and is hereby approved. Plaintiff States are directed to cause the Consumer Compensation funds to be distributed in accordance with said Revised Distribution Plan as soon as practicable after this Final Judgment becomes final. Notwithstanding the foregoing, Liaison Counsel for Plaintiff States are authorized, but not required, to hold the Consumer Compensation funds for a period of up to six months in order to accommodate possible additional settlement agreements.

VI. INJUNCTION

The Court approves the injunctive relief as set forth in the Order and Stipulated Injunction, attached as Exhibit 14 to Plaintiff States' Memorandum in Support of Motion for Final Approval and is incorporated herein by reference.

VII. STATE PAYMENTS

The Court hereby approves the distribution to Plaintiff States of the State Compensation funds provided by Defendants pursuant to Section IV.B of the Settlement Agreements. Plaintiff States may allocate and distribute these funds at their discretion as set out in Section VI.B of the Settlement Agreements any time after this Final Judgment becomes final, and without further order of this Court.¹

¹ With respect to the State of Colorado, its apportionment shall be used first for reimbursement of Colorado's actual costs and attorneys' fees, and second, to be held along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud, or antitrust enforcement efforts.

VIII. NO ADMISSION OF LIABILITY

Neither this Final Judgment nor the Settlement Agreements shall be used or construed by any person as an admission of liability by any Defendant to any party or person, or be deemed evidence of any violation of any statute or law or admission of any liability or wrongdoing by a Defendant or of the truth of any of the claims or allegations contained in the Complaint. Neither this Final Judgment nor the Settlement Agreements shall be offered in evidence or used for any other purpose in this or any other matter or proceeding other than as may be necessary to consummate or enforce the Settlement Agreements or the terms of this Final Judgment, or by Defendants in connection with any action asserting Released Claims.

IX. DISMISSAL OF ACTIONS AND RELEASE

Upon the Effective Date, and subject to the provisions of Section X of this Final Judgment, Plaintiff States' Complaint is dismissed with prejudice. Plaintiff States, and Consumers in the Plaintiff States who did not file with the Court valid and timely requests for exclusion from the Settlement Agreements, are barred from further prosecution of the Released Claims, and Releasees are released and forever discharged from liability for the Released Claims.

X. FINALITY OF JUDGMENT

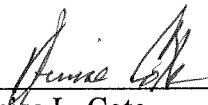
The Court finds that this Final Judgment adjudicates all the claims, rights and liabilities of the parties, and is final and shall be immediately appealable.

XI. RETENTION OF JURISDICTION

Without affecting the finality of this Final Judgment, the Court retains jurisdiction for the purpose of enforcing the terms of the Settlement Agreements and enabling any party hereto to apply for such further orders and directions as may be necessary or appropriate for the

construction or carrying out of this Final Judgment, the modification of any of the provisions hereto to the extent such modification is permitted, and to remedy of a violation of any of the provisions contained herein. This Court shall have the authority to specifically enforce the provisions of this Final Judgment.

So ordered this 8th day of February, 2013.



Hon. Denise L. Cote
United States District Court
Southern District of New York

Attachment 1

Requests for Exclusion

Requests For Exclusion

	Claimant Name	Postmark Date
1	Ron Diel	10/13/2012
2	Jason Kichline	10/14/2012
3	Marcia Williams	10/14/2012
4	Carol E Richards	10/16/2012
5	Carson Alexander Cone	10/16/2012
6	Christopher Ron Salzman	10/16/2012
7	Danielle Stockley	10/16/2012
8	Denise Cote	10/16/2012
9	John Wissenbach	10/16/2012
10	Jordan G Smith	10/16/2012
11	Karen A Sherman	10/16/2012
12	Kenneth G Hagler	10/16/2012
13	Landya B McCafferty	10/16/2012
14	Margaret E Jones	10/16/2012
15	Michael Linebach	10/16/2012
16	Michael Whitacre	10/16/2012
17	Russell Madsen	10/16/2012
18	Teresa Barker	10/16/2012
19	Thomas Friedman	10/16/2012
20	Toni Burnham	10/16/2012
21	James L Nesmith	10/19/2012
22	Harriett Wehrheim	10/20/2012
23	George Yunaev	10/22/2012
24	Jeanne M Nohalty	10/22/2012
25	Rita Chubarova	10/22/2012
26	Aloysius J Brown III	10/23/2012
27	Daniel Flynn	10/23/2012
28	Samuel Vesa	10/23/2012
29	Shane Davis	10/23/2012
30	Myriam Puga (Eric)	10/24/2012
31	Carl A Gallozzi	10/26/2012
32	Pamela Berwick	10/26/2012
33	David Endahl	10/29/2012
34	Jennifer L Adams	10/29/2012
35	James O Browning	10/30/2012
36	Shelly Martin	10/30/2012

Requests For Exclusion

	Claimant Name	Postmark Date
37	Matthew Roe	11/1/2012
38	Anthony Petru	11/5/2012
39	Laura Warner	11/5/2012
40	Lauren Albert	11/5/2012
41	Susan Roberts	11/5/2012
42	Denise Jones	11/8/2012
43	Adam Kushner	11/10/2012
44	William G Charest	11/10/2012
45	Cindy Fryer	11/15/2012
46	Kathy Christian	11/15/2012
47	Lisa Mills	11/17/2012
48	Randy Shine	11/17/2012
49	David Akin	11/19/2012
50	Shelby Sinkhorn	11/19/2012
51	David Taniguchi	11/23/2012
52	Amanda Millet Buchanan	11/24/2012
53	Sean Webb	11/24/2012
54	Victoria Vice	11/27/2012
55	Margot Reges	12/1/2012
56	Cynthia Tyler	12/7/2012
57	Kathleen Pitlock	12/7/2012
58	Aubrey Cummings	12/10/2012
59	Lea Winston	12/10/2012
60	Linda Winston	12/10/2012
61	Sue Gordon	12/10/2012
62	Adam Speegle	12/11/2012
63	Kristine Enderle	12/11/2012
64	Laura Collins	12/11/2012
65	Owen Kendler	12/11/2012
66	Stephanie Fleming	12/11/2012
67	Thomas McCormick	12/11/2012
68	Carrie A Syme	12/11/2012
69	Andrew Hannemann	12/12/2012
70	Binh Wu	12/12/2012
71	Carla Patat	12/12/2012
72	Carrie Higo	12/12/2012

Requests For Exclusion

	Claimant Name	Postmark Date
73	Christina Kepplinger Johansen	12/12/2012
74	Fiona Scott Morton	12/12/2012
75	Frank Patrick Hallagan	12/12/2012
76	Jay David Owen	12/12/2012
77	Jessica B Stewart	12/12/2012
78	Jim Ratliff	12/12/2012
79	Jodi DeYoung	12/12/2012
80	John P Ireland	12/12/2012
81	Kelly Ann Riley	12/12/2012
82	Kimberly J Tan Majure	12/12/2012
83	Kimberly Linkous	12/12/2012
84	Kun Huang	12/12/2012
85	Linda Winston	12/12/2012
86	Mary Beth McGee	12/12/2012
87	Milly Pichardo	12/12/2012
88	NC State University	12/12/2012
89	Portia Brown	12/12/2012
90	Renata Hesse	12/12/2012
91	Richard Gilbert	12/12/2012
92	W Robert Majure	12/12/2012
93	Julie Slocum Bennani	12/12/2012
94	David Kully	12/13/2012
95	John Read	12/13/2012
96	Stephen T Fairchild	12/13/2012
97	Sharona Jepson	12/13/2012
98	Jack Mawdsley	12/13/2012
99	Aaron Goldblum	12/13/2012
100	John R Kramer II	12/13/2012